

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

City of North Chicago, a municipal corporation,
Petitioner,

Vs.

Union Pacific Railroad Company, The State of Illinois Department
of Transportation, Division of Highways, acting through Secretary
of Transportation, Timothy W. Martin, and Lake County, Division
of Transportation acting through County Engineer, Martin
Buehler,
Respondents.

T03-0024

Petition to open a new-at-grade railroad crossing at Martin Luther
King Drive a/k/a 22nd Street and the closure of an existing at-
grade crossing at 2nd Street where said street intersect with the
north commuter line of the Union Pacific Railroad in the City of
North Chicago.

ORDER

By the Commission:

On March 24, 2003, the City of North Chicago, Lake County, Illinois ("Petitioner" or "City") filed a verified petition with the Illinois Commerce Commission ("Commission") in the above-captioned matter, naming as Respondents, Union Pacific Railroad Company ("the Railroad"), State of Illinois, Department of Transportation ("IDOT") and Lake County, Division of Transportation ("County"), seeking an order authorizing the opening of a new highway-rail grade crossing at Martin Luther King Drive and the closure of an existing highway-rail grade crossing at 2nd Avenue (DOT 176 611C). On June 25, 2003, the City filed its Amendment No. 1 to its petition, which served to add the Elgin, Joliet & Eastern Railroad Company as a party respondent and further, requested that the Union Pacific's spur track bisecting the Amstutz Expressway/Martin Luther King Drive intersection be removed and the Amstutz Expressway highway-rail grade crossing be removed.

On July 8, 2004, pursuant to notice as required by law and the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission at the office of the Commission in Chicago, Illinois. Counsel entered appearances for the City and for the Railroad. A railroad safety specialist of the Commission's Railroad Section, Transportation Bureau, also entered an appearance. The Special Assistant Attorney General ("SAAG") entered

an appearance on behalf of the Staff of the Commission. At the conclusion of the hearing, the record was marked "Heard and Taken".

Petitioner's witnesses were Rob May, Director of Community Development and Planning for the City, Randy Henke, Vice President and Joseph Neal, Project Manager at Alfred Benesch and Company - engineering consultants for the City. The Railroad presented the testimony of Thomas Andryuk, Manager of Field Engineering, Commuter Operations.

Mr. May testified, with the assistance of exhibits, on the City's proposed redevelopment plan of an area bounded approximately by Martin Luther King Drive on the south, Sheridan Road on the east and the Elgin Joliet & Eastern (EJ & E) Railroad Company's track to the north and west. The Great Lakes Naval Training Center, located east of the proposed redeveloped site, and east of the Union Pacific's north commuter rail line, comprises approximately one-half the landmass of the City and contains approximately one-half the population of the City. The proposed redevelopment is predicated on use of the facilities by Naval Training Center personnel and visitors via a new highway-rail grade crossing that will connect Martin Luther King Drive to the west with a Naval Training Center entrance to the east (Gate #4/Cluverius Avenue). Mr. May indicated the City will fully fund all associated costs with the project with various grants secured through U.S. Department of Commerce (Economic Development Administration) and the County as well as various City issued bonds. No assistance from the Grade Crossing Protection Fund (GCPF) is requested or will be forthcoming.

Mr. Neal and Mr. Henke testified, with the assistance of exhibits, showing present and proposed conditions in the general vicinity of the redevelopment site. With respect to the proposed highway-rail grade crossing at Martin Luther King Drive, the following items will be included as part of the project: Illinois Route 137 (Amstutz Expressway south of the crossing, Sheridan Road north of the crossing) on the west side of the Railroad tracks will be rehabilitated including the opening of the ramps to 24th Street, which is currently grade separated with the Railroad tracks and will help facilitate additional traffic to and from the Naval Gate #4; on the east side of the Railroad tracks, Sheridan Road south of the proposed highway-rail grade crossing and Main Street north of the proposed highway-rail grade crossing will be reconstructed; the existing bike path between 24th Street and Martin Luther King Drive on the east side of the Railroad tracks will be eliminated and removed; the existing spur track from the Railroad's main tracks that currently bisect the Amstutz Expressway/Martin Luther King Drive traffic intersection will be eliminated and removed; the proposed highway-rail grade crossing will be equipped with automatic flashing light signals and gates as well as a barrier median on both approaches to the crossing. The traffic intersections on both sides of the proposed highway-rail grade crossing (Amstutz Expressway/Sheridan Road at Martin Luther King Drive on the west side and Sheridan Road/Main Street at Great Lakes Naval Training Center Gate #4/Cluverius Avenue on the east side) will be controlled by traffic signals operating off one traffic signal controller. Based on the proximity of the signalized intersections to the proposed highway-rail grade crossing, an

interconnection of the traffic signals to the railroad warning devices is required with a minimum simultaneous preemption time of twenty-nine (29) seconds required. In conjunction with the opening of the proposed highway-rail grade crossing, the existing highway-rail grade crossing at 2nd Avenue (DOT 176 611C) will be eliminated and removed.

The Railroad then testified that although it was generally in favor of the project as a whole, concerns relating to the installation of fencing and the removal of the spur track needed to be resolved. Subsequent to the hearing, the Railroad and City agreed to the following issues, as well as others:

- The UP agrees to be responsible for the physical removal of the crossing surface and signals; and to pay up to the sum of \$15,000 for barrier, curb, gutter, drainage and grading work for the closure of the Second Avenue highway-rail grade crossing in the City of North Chicago, Illinois.
- The City will pay 100% for the removal of the existing pedestrian walk and the installation of the new crossing surface and automatic warning system at Martin Luther King Drive.
- The City will pay actual reasonable and customary costs not to exceed \$7,500.00 for the removal of the crossing warning system at Amstutz Expressway.
- The City will construct a six-foot (6') high vinyl clad chain link fence as follows:
 - 200 feet on Southeast and Southwest side of new crossing;
 - 422 feet on Northeast side of new crossing, tying into the existing fence from Hines Lumber;
 - 1,425 feet on Northwest side of new crossing, extending 200 feet north of the 2nd Avenue crossing.
- The City will assume maintenance responsibility for all fencing.
- The UP will provide necessary easements for all fencing at no cost to the City.
- The UP will remove the existing switch and EJE connecting trackage north of the crossing at no cost to City and the City will remove trackage through the new crossing area at no cost to UP.

The Commission, having given due consideration to the petition and the record herein, and being fully advised in the premises, is of the opinion and finds that:

- (1) The Illinois Department of Transportation, the County of Lake and the City of North Chicago exist by virtue of the laws of the State of Illinois;
- (2) The Union Pacific Railroad Company is a corporation engaged in the transportation by rail of property and/or passengers for-hire and as such is a "rail carrier" as defined in Chapter 625 ILCS 5/18c-1104(30) of the Illinois Commercial Transportation Law ("Law"), as amended;
- (3) The Commission has jurisdiction of the subject matter and parties herein;

- (4) Matters contained in the prefatory portion of this Order are adopted as findings of fact;
- (5) The City of North Chicago proposes a redevelopment project that will entail closing the existing highway-rail grade crossing at 2nd Avenue (DOT 176 611C) and opening of a new highway-rail grade crossing at Martin Luther King Drive where said street intersects with the north commuter line of the Union Pacific Railroad in the City of North Chicago;
- (6) In consideration of the train traffic and speed and the volume of vehicular traffic expected, warning devices at the new highway-rail grade crossing should consist of automatic flashing light signals and gates controlled by constant warning time circuitry;
- (7) Based on the proximity of the signalized traffic intersection on both sides of the new highway-rail grade crossing, the operation of the traffic signals needs to be interconnected with the operation of the proposed automatic flashing light signals and gates at the new highway-rail grade crossing at Martin Luther King Drive for the safety and convenience of the traveling public;
- (8) The City proposes that the minimum simultaneous preemption time provided by the Railroad to IDOT for the proposed traffic signal preemption sequence at the new highway-rail grade crossing at Martin Luther King Drive should be twenty nine (29) seconds;
- (9) Permission should be granted for the opening of a new highway-rail grade crossing at Martin Luther King Drive and the closure of an existing highway-rail grade crossing at 2nd Avenue (DOT 176 611C) in the City of North Chicago, Lake County Illinois, over the mainline tracks of the Union Pacific Railroad Company's north commuter line in accordance with the plans approved by the parties;
- (10) The City should pay the full cost of the project, except for the costs agreed with the Railroad as outlined in the prefatory portion of this Order, and no assistance is requested or recommended from the Grade Crossing Protection Fund of the Motor Fuel Tax Law;
- (11) The project herein approved should be completed of within eighteen (18) months of the date of this Order;
- (12) Chapters 625 ILCS 5/18c-1702 and 5/18c-1704 require each "person" as defined by Section 5/18c-1104, to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not

more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the City of North Chicago is hereby granted permission to open a new highway-rail grade crossing at Martin Luther King Drive and close the existing highway-rail grade crossing at 2nd Avenue (DOT 176 611C), utilizing Union Pacific Railroad Company forces as outlined in the agreed City of North Chicago / Union Pacific Railroad Company language outlined in the prefatory portion of this Order, to install traffic signals at the traffic intersections of Illinois Route 137 (Amstutz Expressway/Sheridan Road) at Martin Luther King Drive and Sheridan Road/Main Street at the Great Lakes Naval Training Center Gate #4/Cluverius Avenue, interconnect the traffic signals with the warning devices at the new highway-rail grade crossing at Martin Luther King Drive where said street intersects with the north commuter line of the Union Pacific Railroad Company, establish the minimum preemption time provided by the Union Pacific Railroad Company to the Illinois Department of Transportation for the traffic signal preemption sequence at said intersections, and complete the work as noted in the prefatory section.

IT IS FURTHER ORDERED that the that the Martin Luther King Drive highway-rail grade crossing warning system shall be designed to provide for a minimum of twenty nine (29) seconds simultaneous preemption time for the normal operation of through trains and shall thereafter be maintained by the Union Pacific Railroad Company.

IT IS FURTHER ORDERED that the cost of all improvements herein approved shall be paid entirely by the City of North Chicago, except for the costs agreed with the Railroad as outlined in the prefatory portion of this Order.

IT IS FURTHER ORDERED that the City of North Chicago and the Union Pacific Railroad Company are hereby required and directed to proceed with the project herein approved and in all aspects thereof to conform to the requirements of 92 Illinois Administrative Code 1535.

IT IS FURTHER ORDERED that the Union Pacific Railroad shall file Form 3 of 92 Illinois Administrative Code 1535 of this Commission showing details of the automatic warning device installation herein required and shall receive approval thereof by X-Resolution before commencing the work of the installation.

IT IS FURTHER ORDERED that after the warning system work herein required has been completed, the Union Pacific Railroad Company shall not take any action which would result in a reduction of the minimum simultaneous preemption time without approval of the Commission.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company and Illinois Department of Transportation shall each post a readily visible notice inside their respective warning system cabinets at the aforesaid grade crossing notifying their personnel not to take any action which would result in a reduction of the minimum railroad preemption time herein required without the approval of the Commission. An actual size copy of such notice shall be submitted by the Union Pacific Railroad Company and IDOT to the Commission's Railroad Safety Program Administrator for approval.

IT IS FURTHER ORDERED that the City of North Chicago and the Union Pacific Railroad Company shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress each has made toward completion of the work herein required. Each progress report shall include the Commission Order Number, the Order Date, the project completion date as noted in this Order, crossing information (Inventory Number and Railroad Milepost), type of improvement, and project manager information (the name, title, mailing address, phone number and facsimile of the City and Railroad employee responsible for management of the project.)

IT IS FURTHER ORDERED that the City of North Chicago and the Union Pacific Railroad Company shall each submit a written notice, to the Director of Processing, Transportation Bureau of the Commission, of the date the work herein required of it has been completed; said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that the work herein required shall be completed within eighteen (18) months of the date of this Order.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall within five (5) days of the completion of the work herein, file National Inventory Update Report Forms with the Commission's Director of Processing, Transportation Division, as notices of said completion.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders, as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 10th day of November 2004.

Edward C. Husley
Chairman

JUDGE <i>BC</i>
SECTION CHIEF
<i>[Signature]</i> ORDERS SUPERVISOR